

is the government body in charge of issuing certificates of fitness and TOLs.

The issue of a TOL for a building is a certificate by the BCD that the work of erecting the building is completed and that the building can be occupied.

The appellants' contention that a building is "completed" only when the building works have fully complied with all the building regulations and the approved plans and that such compliances have been so certified by the BCD has no basis in law.

The Act is not concerned with whether a building has been built in accordance with approved plans. An unauthorised building can be entered in the Valuation List and be liable to property tax so long as the work of erecting that unauthorised building is completed.

The Board was correct in holding that the flats and penthouses were "completed" within the meaning of section 19 when TOLs were issued on June 8, 1974, for the flats and on December 5, 1974, for the penthouses.

It follows (1) that the inclusion of the fifty-seven flats and the two penthouses in the Valuation List on January 1, 1975 is valid and (2) that property tax is payable from June 8, 1974 in respect of the fifty-seven units of flats and from December 8, 1974, in respect of the two penthouses.

The appeals are dismissed with costs.

Appeals dismissed.

Solicitors: *Chor Pee & Co.*

FRASER & NEAVE LTD. v. YEO HIAP SENG LTD.

[O.C.J. (Sinnathuray J.) November 10, 1981]

[Singapore — Civil Suit No. 404 of 1978]

Trade Marks — Passing-off — "Sarsi" — Chinese characters "Sar See Swee" — Whether essential features of the mark of the plaintiffs — Whether infringement of trade mark of plaintiffs — Three Chinese characters "publici juris".

The plaintiffs claimed an injunction for infringement of their registered trade mark and for passing-off. The plaintiffs were manufacturers of aerated beverages since 1883. One of the aerated beverages bottled by the plaintiffs is sarsaparilla. The said drink was denoted in 3 Chinese characters which is pronounced "Sar See Swee". The plaintiffs became the registered proprietors in Singapore of Trade Mark No. 4551 in class 32 in respect of sarsaparilla. The mark is in rectangular paper label; it has the plaintiffs' name in English and Chinese. It bears the device of a "lion" in a circle and 3 Chinese characters in a scroll design.

The defendants were also manufacturers of aerated beverages. At the end of 1977, they started bottling sarsaparilla. They advertised the drink "Mirinda Sarsi". In the advertisements in Chinese for "Sarsi" the defendants used the same Chinese characters as used by the plaintiffs for their sarsaparilla.

The plaintiffs complained that the use of the defendants, in the course of trade in relation to sarsaparilla, of the words "Mirinda Sarsi" in advertisements over the media infringed the plaintiffs' registered trade mark. The defendants on the other hand maintained that long before the registration of the plaintiffs' Trade Mark in 1940 the words had become *publici juris* and common to the trade in Singapore.

A The defendants counterclaimed for an order that the Register of Trade Marks be rectified by causing an entry of disclaimer to be made in respect of Trade Mark No. 4551 that the plaintiffs had no right to the exclusive use of the three Chinese characters "Sar See Swee". The question before the court was whether "sarsi" was part of the plaintiffs' registered trade mark.

B Held, dismissing the plaintiffs' claim and allowing the defendants' counterclaim: (1) by 1940 the 3 Chinese characters were *publici juris*, that they were used freely as indicating the character and quality of sarsaparilla; hence, they could not have been appropriated by the plaintiffs and claimed by them as exclusively belonging to them;

(2) the use of the 3 Chinese characters by the defendants in their advertisements had not infringed the plaintiffs' registered Trade Mark;

C (3) the defendants' use of the 3 Chinese Characters with the word "Mirinda" was not calculated to deceive the public;

(4) the 3 Chinese characters were not the essential features of the mark of the plaintiffs. The said characters did not identify the drinks of the plaintiffs. Instead, the device of the red "lion" and the abbreviated name of the plaintiffs on the bottles and crown corks were the distinctive marks;

D (5) the defendants were allowed the order as claimed in the counterclaim that the Register of Trade Marks be rectified by an entry of disclaimer of the 3 Chinese Characters in respect of Trade Mark No. 4551.

Case referred to:-

(1) *Ford v. Foster* (1872) L.R. 7 Ch. App. 611, 628.

CIVIL SUIT.

E L.A.J. Smith (C.S. Tay with him) for the plaintiffs.
M. Karthigesu for the defendants.

Cur. Adv. Vult.

Sinnathuray J.: In this action the plaintiffs claim an injunction for infringement of their registered Trade Mark. At the trial, the plaintiffs added another claim for an injunction for passing-off. The two claims are different, they have to be considered separately, and I should at the outset state what the differences are.

F An action for infringement is founded on property. The plaintiffs claim to be the owners of a valid registered trade mark. The allegation made against the defendants is that they have violated the proprietary rights of the plaintiffs. In a passing-off claim, the plaintiffs allege that the defendants have wrongly represented their goods as the goods of the plaintiffs; in such a claim the plaintiffs' goods must have some sort of reputation, and there must be deception or confusion caused by the defendants' goods.

H In the present case, at the conclusion of the hearing, I held that there was no evidence of passing-off. The action that was fought out was the complaint that the defendants had in their advertisements infringed the registered Trade Mark of the plaintiffs. Again, on the facts and for the reasons I give, this claim also failed.

I The plaintiffs, Fraser & Neave Limited (F & N), are engaged in manufacturing and bottling aerated beverages. They have been so engaged in Singapore for more than 90 years. They started business in 1883. They became a public company in 1898. Since the turn of the century, they have opened bottling plants in many places in the countries now called Brunei, Indonesia, Malaysia, and Thailand. One of the aerated

beverages bottled by the plaintiffs is sarsaparilla. It is "a sweetened carbonated beverage similar to root beer with the predominant flavour from birch oil and sassafras": see *Webster's Dictionary*, 3rd Edition, at page 2015. The drink of the plaintiffs is denoted in three Chinese characters which phonetically rendered is pronounced "Sar See Swee".

The defendants, Yeo Hiap Seng Limited, are also manufacturers of and dealers in, among other things, aerated beverages. At first they bottled "still" drinks, soya bean milk, and chrysanthemum tea. Late in the nineteen sixties they entered the market in carbonated drinks. They are the licensees in Singapore of the trade mark "Mirinda" owned by Pepsi-Cola International of New York. In the "Mirinda" range, they bottle and market Mirinda Orange, Mirinda Lemon Lime, Mirinda Strawberry, and a few others. About the end of 1977, they started bottling sarsaparilla. They advertised the drink "Mirinda Sarsi". In the advertisements in Chinese, for "sarsi" the defendants used the same Chinese characters as used by the plaintiffs for their sarsaparilla.

It is not in dispute that on January 2, 1940 the plaintiffs became the registered proprietors in Singapore of Trade Mark No. 4551 in Class 32, aerated beverages (non-alcoholic), in respect of sarsaparilla. The mark is in a rectangular paper label; it has the plaintiffs' name in English and Chinese; it bears the device of a "lion" in a circle; and in a scroll design are the three Chinese characters "Sar See Swee".

The Certificate issued by the Registrar of Trade Marks for use in legal proceedings dated February 2, 1978 states that the transliteration of the three Chinese characters appearing on the mark is "Sar See Swee" meaning "Sarsaparilla Water". The third character phonetically rendered "Swee" means "water"; so that sarsaparilla is denoted by the first two characters "Sar See".

These two Chinese characters when Romanised can be rendered in different ways. I have used "Sar See". It has been spelt "sarsae". The plaintiffs render it "sarsi". These proceedings have come about because the defendants too want to render it "sarsi". Hereafter, unless otherwise stated, I use the word "sarsi" to refer to the two Chinese characters as well as the phonetic rendering of them.

The plaintiffs' claim for infringement is made on two grounds. First they say that as registered proprietors of the Trade Mark No. 4551 they have since 1940 used the three Chinese characters *as a trade mark* (emphasis added) for their sarsaparilla. Secondly they say that as the trade and public of whatever race when requiring sarsaparilla made by them ask for "sarsi", they have for many years adopted "sarsi" *as a trade mark* (again emphasis added) either alone or in conjunction with the three Chinese characters. The plaintiffs complain that the use by the defendants, in the course of trade in relation to sarsaparilla, of the words "Mirinda Sarsi" in advertisements in newspapers, on posters, over the Radio and on Television are an infringement of the plaintiffs' registered Trade Mark.

The defendants admit that they have advertised as alleged by the plaintiffs, but they deny that "Mirinda

A "Sarsi" has infringed the plaintiffs' registered Trade Mark. They say that sarsaparilla bottled by them are distinctly marked with the words "From the Makers of Pepsi-Cola" and show a fruit with the word "Mirinda" thereon. This they say is not likely to be taken as indicating a connection in the course of trade between their goods and those of the plaintiffs.

B The defendants contend that the plaintiffs are not entitled to claim any proprietary right to the use of the three Chinese characters or the Romanised rendering thereof because they have long been used by manufacturers and bottlers of sarsaparilla, particularly in South China from where they originated to refer to the character and quality of sarsaparilla. The defendants maintain that long before the registration of the plaintiffs' Trade Mark in 1940 the words had become *publici juris* and common to the trade in Singapore.

C The defendants counterclaim for an order that the Register of Trade Marks be rectified by causing an entry of disclaimer to be made in respect of Trade Mark No. 4551 that the plaintiffs have no right to the exclusive use of the three Chinese characters "Sar See Swee". In support of the claim the defendants produced Trade Mark No. 6555 of A.S. Watson & Co., Limited of Hong Kong which was registered in Singapore on May 17, 1940, about five months after the registration of the plaintiffs' Trade Mark. The certificate states that the registration shall give no right to the exclusive use of the Chinese characters "sarsae". The Chinese characters are identical to the Chinese characters "sarsi" used by the plaintiffs.

I now refer to the evidence given at the trial.

F Mr. Ong Chu Poh holds a B.A. in Chinese Literature from Nanyang University. He gave evidence for the plaintiffs that in the dictionaries he had consulted there is no combination of the two Chinese characters "sarsi". He referred particularly to the *Encyclopaedic Dictionary of the Chinese Language* which is in thirty volumes. He said the first character "sar" refers to a kind of refined sand found on a beach or a river bank. The other character "si" can mean 'advice', 'representation', or 'omen'. Taken together "sarsi" has no meaning because it makes no sense. But Mr. Ong was unable to assist me on the crucial question whether "sarsi" is a coined or invented word used in this region to describe the character and quality of sarsaparilla. I would add however that when Mr. Ong was referred by Mr. Karthigesu for the defendants to two local English/Chinese dictionaries, and to a handbook published in Taiwan, he did not dispute that there are references in them that the transliteration of sarsaparilla into Chinese is "sarsi", but Mr. Ong did not give any weight to these dictionaries. I too would not rely on them to resolve the issue placed before me.

I The next witness for the plaintiffs was Mr. C.G. Menon, the Assistant Secretary of the F & N Group. I think it is fair to say that the material evidence of Mr. Menon, as distinct from the views expressed by him on the claims made by the plaintiffs, was not in dispute. The mark of the plaintiffs, identical to the one registered in Singapore in 1940, was registered by the plaintiffs in Indonesia in 1929, in Thailand in

1932, in Malaya in 1951, in Sarawak in 1953, in North Borneo in 1954, and in Brunei in 1957.

Mr. Menon said that up to 1950, the bottles of sarsaparilla of the plaintiffs had on them paper labels. In 1950 the plaintiffs changed to ceramic labels. The changes that were effected are material. The device of a "lion" in a circle is prominently shown on the ceramic label. Below the device on one side there is a big letter F; and on the other side a big letter N. The words on the label are: "Estd. 1883" — "Fraser & Neave" — "Singapore-Kuala Lumpur and Branches". What is left out are the three Chinese characters.

Mr. Menon gave an account of the transfer of the three Chinese characters from the paper labels to the crown corks. It is material that I briefly describe the changes effected, over the years, to the stamp on the crown corks. Between 1950 and 1965 on the crown corks there was a letter F and a letter N with the device of a "lion" between the two letters; below that were the three Chinese characters; and below them was "sarsaparilla". Then between 1965 to 1978, the three Chinese characters were at the top of the crown corks; at the centre was a design triangular in form in which there was the device of a "lion" and the abbreviation "F & N"; below the design was "sarsi". The last change in form was made in 1978. The three Chinese characters were omitted on the crown corks.

So then, since the change made in 1978, no trace remains of the three Chinese characters on the bottles of sarsaparilla of the plaintiffs. Over the years, since the registration of the plaintiffs' Trade Mark in 1940, the plaintiffs have made known that what is characteristic of their mark is the device of the red "lion", and the abbreviation of the name "F & N". I will show later that the response of the trade witnesses to the mark of the plaintiffs is just as I have said.

Mr. Menon gave evidence of other manufacturers and bottlers in Singapore. In the late forties there were a few small Chinese companies but they had all ceased business long ago. Framroz and Phoenix ceased to operate in the sixties. In the late seventies the plaintiffs came to know of the defendants bottling "Mirinda sarsi", Magnolia of Singapore Cold Storage making "Toppo sarsi", and two small companies, National Aerated Water Company and Eastern Aerated Water Company bottling sarsaparilla with outlets in the rural areas. Mr. Menon said that it is the policy of the plaintiffs to take action against anyone who use the three Chinese characters or the word "sarsi" because the plaintiffs claim a proprietary right in respect of them.

Next, four witnesses from the trade gave evidence. It is clear from the general tenor of the evidence they gave that they were not independent witnesses. They said that they only sold F & N sarsi. They were not favourably disposed to "Mirinda sarsi". But one of them said: "Sarsi is a particular kind of drink." Another who owns a coffee shop in Lavender Street was asked in his evidence-in-chief:

"Q. Do you know the trade mark of F & N sarsaparilla?
A. Red lion."

A Again another, a wholesaler, an agent of the plaintiffs who only sells F & N drinks said that when his dealers want F & N sarsi they ask for "Lion brand sarsi". Notwithstanding the observation I have made of these witnesses, on this aspect of the matter I accept their evidence reluctant though they were in giving it.

B Finally, there was one other witness, Mr. E.H. Sheares who runs a private detective agency. In March and April 1980, he carried out a survey of coffee shops selling "sarsi". It is sufficient to say that his evidence was of no assistance to me.

C As for the defence, the main thrust was to show that "sarsi" was *publici juris* and common to the trade long before 1940. The defendants called three witnesses.

D The first is Mr. Ting Sek Eng. He is a splendid gentleman, he is a well preserved octogenarian over 82 years of age. He was born in the province of Fukien in China. As a young man he attended Anglo Chinese College in Kulangsu, an island off Amoy, which at that time was an international settlement. In 1919, after he had graduated from the College, Mr. Ting went to work for a foreign consular service in Kulangsu. In 1949, before the Liberation Army got to Amoy he left China and went to Hong Kong. In 1950 he worked for the British Ministry of Works which had moved from Shanghai to Hong Kong. In 1953 when the headquarters of the Ministry was transferred to Singapore, Mr. Ting came to Singapore. He was then aged 54. He was an administrative officer in the Ministry in Phoenix Park for 10 more years. After his retirement he joined the defendants as a credit controller. About eight years later, he was invited onto the Board of the defendants of which he is still a director. With twinkle in his eyes he said he was also a shareholder of the plaintiffs.

The following evidence of Mr. Ting was unchallenged:

"I know the three Chinese characters. . . They read as 'sarsi water'. The first two are 'sarsi'. Sarsi is a drink. There is no meaning in the two characters. Sarsi represents sarsaparilla. I have taken the drink. It is a favourite drink of mine."

G I first came across this drink when I was in the last year of my course in 1919. I was a member of the football team of my school. We had several teams that played against each other in the school. After the match, we all had sarsi drinks. This was in Kulangsu. This drink was very popular in the market for its flavour and its refreshing effect. The people in the market referred to this drink as sarsi.

H The drink was available before 1919. It was sold in bottles. It was a very funny kind of bottle. It did not have a crown cork. It had a glass ball which was kept up by the pressure inside the bottle. There was a special device to open the bottle. The bottles had paper labels. I recall a pagoda supported by two unicorns. There was 'sarsaparilla' printed in the middle in English. Underneath was 'A.S. Watson & Co., Hong Kong'. I think it also said 'Manufactured by A.S. Watson, Hong Kong'. Also on each side of the label was a character, 'sarsi' in Chinese. . .

I After Watson moved back to Hong Kong from Kulangsu, there was a successor. Watson was in Kulangsu for sometime. They imported this drink from Hong Kong. I presume they found a successor. After that the successor called 'Amoy Pharmacy' (Watson also had a dispensary in Kulangsu) got an ice factory and bottled sarsi with crown corks. Amoy Pharmacy also bottled other drinks. I think Amoy Pharmacy used the same labels as Watson's with the word 'successor' or to that effect. Watson was very famous in those days."

The two other witnesses, Mr. Peter Sia, a company director who had also lived in Kulangsu for about 30 years (he is now over 65 years of age), and Mr. Lim Ka Lok, a retired school teacher, gave much the same evidence as Mr. Ting. To fill in further details of the evidence of Mr. Ting, I refer to some of the evidence of Mr. Lim. He said:

"From the age of about 5, I was familiar with this drink, sarsi. I am the third generation of the Lim family that was operating Tong Hong aerated water and ice factory. My uncle was managing Tong Hong. It was started by my grandfather. From my parents, I came to learn that we had a very close connection with Watson & Co. They were operating a factory earlier in Kulangsu before we took it over. It would be around 1919. Watson then moved out to Hong Kong....

By the age of 12/13 when I was in Kulangsu I had a better idea of what went on in the factory. At that time our speciality was 'sarsaparilla', the short form of which was 'sarsi'. Everybody referred to the drink as 'sarsi'....

The labels on the bottles were the same as Watson's. It had a pattern. The word 'sarsaparilla' was across it. On the top was 'A.S. Watson' in English. On the left top in Chinese was 'Watson Pharmacy'. Under 'sarsaparilla' were the Chinese characters 'sarsi'.

... When I left China in 1937, we were still manufacturing. After that I did not have any communications with them. My knowledge of what happened then was that the Japanese took it over, and after 1949 the Communist Chinese. My uncle left China, went to Hong Kong and finally settled in Taiwan. ... Our sarsi was exported to Singapore till about 1937."

In leaving the evidence of the three witnesses, it is material to note that the mark of Watson described by Mr. Ting and Mr. Lim which Tong Hong continued to use in China was registered as a trade mark by Watson in Hong Kong in November 1908. That registered trade mark of Watson is an exhibit in this case. On the label is "sarsaparilla", and below it are the two Chinese characters "sarsi". At the base of the label mention is made of "Hong Kong & China" from which it is to be inferred that the drink was bottled in those two countries, or at least, that Watson carried on business there. It is this mark of Watson which was registered in Singapore on May 17, 1940 but with the substitution of "sarsae" for "sarsaparilla" and the disclaimer I have already mentioned.

At the conclusion of the hearing, on a review of the evidence, it seemed to me that the facts were not seriously in dispute. The difference between the parties was as to the legal consequences that should be given to the facts.

The primary issue was the "status" of the word "sarsi". The question for decision was whether "sarsi" is part of the plaintiffs' registered Trade Mark No. 4551. That raised two further questions. What is the meaning of "sarsi"? How did it originate?

The fact is that "sarsi" is not an English word. It is a transliteration of two Chinese characters. The use of the combination of the two Chinese characters was unknown and unheard of until someone started to use it to denote in Chinese the aerated beverage "sarsaparilla". There is no evidence as to when it was or who it was that had first coined or invented the transliteration. But it is clear that by 1908 the two Chinese characters were used by Watson for sarsaparilla bottled and sold by them in Hong Kong and China. Later when Watson withdrew from China,

A Tong Hong continued to bottle sarsaparilla in China with the labels of Watson. I found as a fact that all this was long before the plaintiffs started to use the two Chinese characters with the third character "Swee" for sarsaparilla bottled by them. By then the drink was popular and well known as sarsi in South China.

B On the evidence before me it was a reasonable inference to make that the two Chinese characters denoting sarsaparilla were introduced into Singapore from China. The earliest record the plaintiffs have is the registration of their mark in Indonesia in 1929. It was for lemonade. But what is more curious is the mark of the plaintiffs was not registered in Singapore till 1940. What is of interest to note here is that 10

C days after the plaintiffs registered their mark, on January 12, 1940 Popular Aerated Water Works (1937) Ltd. registered their mark which has the word "sarsaparilla" and the three Chinese characters identical to those of the plaintiffs. In the certificate of Popular there are two explanations. One explanation is that the transliteration of the Chinese characters appearing on the mark "Haw Peow Sar See Chwee" means "Tiger Brand Sarsaparilla Water". The other explanation is that "in use upon goods covered by the specification other than Sarsaparilla, the mark will be varied by the substitution of the name of such goods for the word 'Sarsaparilla'".

E In my view, on these facts, it is indisputable that "sarsi" describes the character and quality of sarsaparilla. Nothing is more plain than that described by the Registrar of Trade Marks in the plaintiffs' certificate and that of Popular that "Sar See Swee" or "Sar See Chwee" means "Sarsaparilla Water". It was therefore that at the conclusion of the hearing, I held that by 1940 the three Chinese characters were *publici juris*, that they were common to the trade, that they were used freely as indicating the character and quality of sarsaparilla. In my view they could not have been appropriated by the plaintiffs and claimed by them as exclusively belonging to them. Accordingly, I held that the use of the three Chinese characters by the defendants in their advertisements had not infringed the plaintiffs' registered Trade Mark.

G There is yet another finding that I made. It is crucial to the main question of infringement. It is also relevant on the question as to whether the three Chinese characters have become *publici juris*. I found as a fact that the use by the defendants of the three Chinese characters with the word "Mirinda" was not calculated to deceive the public. Therefore on the test laid down by Mellish L.J. in the well-known case of *Ford v. Foster*⁽¹⁾ the three Chinese characters have become *publici juris*. Mellish L.J. said:

I "Then the question is, has it become *publici juris*? And there is no doubt, I think, that a word which was originally a trade mark, to the exclusive use of which a particular trader, or his successors in trade, may have been entitled, may subsequently become *publici juris*.... Then what is the test by which a decision is to be arrived at whether a word which was originally a trade mark has become *publici juris*? I think the test must be, whether the use of it by other persons is still calculated to deceive the public, whether it may still have the effect of inducing the public to buy goods not made by the original owner of the trade mark as if they were his goods. If the mark has come to be so public and in such universal use that nobody can be deceived by the use of it,

and can be induced from the use of it to believe that he is buying the goods of the original trader, it appears to me, however hard to some extent it may appear on the trader, yet practically, as the right to a trade mark is simply a right to prevent the trader from being cheated by other persons' goods being sold as his goods through the fraudulent use of the trade mark, the right to the trade mark must be gone."

Next, on the main question of infringement of the plaintiffs' registered Trade Mark, for the reasons I have already given, I can be brief. On the evidence I found that the three Chinese characters are not the essential features of the mark of the plaintiffs. It is not them that identify the drinks of the plaintiffs. What is distinctive of the plaintiffs' registered Trade Mark are the device of the red "lion" and the name of the plaintiffs which came to be denoted on the bottles and crown corks of the plaintiffs in the abbreviated form F & N. In my judgment, the advertisements of the defendants were not likely to deceive anyone to believe that "Mirinda Sarsi" offered by the defendants was F & N sarsi made by the plaintiffs.

Finally, I want to say a few words on the phonetic Romanised rendering of the Chinese characters "sarsi" or "Sar See Swee". Neither of them is incorporated in the registered Trade Mark of the plaintiffs. I am therefore of the view that the plaintiffs cannot object to the defendants or anybody else using either "sarsi" or "Sar See Swee".

For all these reasons I dismissed the claim of the plaintiffs. I granted the defendants the order as claimed in the counterclaim that the Register of Trade Marks be rectified by an entry of disclaimer of the three Chinese characters in respect of Trade Mark No. 4551. The interim injunction granted on April 13, 1978 was discharged, and I directed the Registrar to assess damages pursuant to the undertaking given by the plaintiffs on the said interim injunction. Costs were given to the defendants.

*Claim dismissed;
Counterclaim allowed.*

Solicitors: C.S. Tay & Co.; Karthigesu & Arul.

A MALAYSIAN REPORTS

KAMARUDDIN BIN MOHAMED v. UNITED MOTOR WORKS (M) SDN. BHD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Abdul Hamid F.J.J.) February 3 & May 15, 1980]

[Johore Bahru — Federal Court Civil Appeal
No. 186 of 1978]

Bankruptcy — Service of bankruptcy notice — Substituted service — Notice brought to knowledge of debtor — Act of bankruptcy — Petition presented by corporation — Whether officer authorised — Compliance with forms — Bankruptcy Rules, 1969, rules 95, 97, 109-113, 215 and forms — Bankruptcy Act, 1967, ss. 3, 105 & 133.

In this case the appellant appealed against the decision of the High Court dismissing a motion for the bankruptcy notice and bankruptcy petition to be set aside. On appeal it was contended —

- (a) there was no proper service of the Bankruptcy Notice on the appellant;
- (b) the Petition presented by the respondent was signed on its behalf by an officer not duly authorised for that purpose; and
- (c) there was no act of bankruptcy committed within the last six months before the presentation of the Bankruptcy Petition.

Held: (1) in this case there was a failure to effect the posting within the time prescribed in respect of one of the three modes of substituted service ordered. The order to post on the notice board at the High Court in Kuala Lumpur and to advertise in the *Straits Times* and *Berita Harian* had been complied with but not the posting at the judgment debtor's premises. The appellant admitted that the bankruptcy notice was brought to his knowledge and, as the object of substituted service was to bring the bankruptcy notice to the knowledge of the debtor, if this were achieved the service must be deemed to be good and sufficient;

(2) in this case the debtor had not complied with the bankruptcy notice and therefore there was an act of bankruptcy on which the petition could be grounded;

(3) there is no strict requirement that the forms given or recommended in *Atkin's Forms* must be rigidly followed;

(4) the Credit Manager in this case had authority to institute the bankruptcy proceedings on behalf of the respondents;

(5) in this case the appellant had not paid his debts and the other grounds on which he relied were not proved to the satisfaction of the court and therefore there were no grounds to warrant an annulment of the adjudication order.

Cases referred to:-

- (1) *Re a Judgment Debtor* [1937] 1 Ch. 137, 145.
- (2) *Porter v. Freudenberg* [1915] 1 K.B. 857, 889.
- (3) *Au-Yong v. Dicum & Anor.* [1963] M.L.J. 349.
- (4) *P.T. Pelajaran Nasional Indonesia v. Joo Seang & Co. Ltd.* [1958] M.L.J. 113.
- (5) *Re a Debtor No. 21 of 1950, Ex parte the Debtor v. Bowmaker Ltd. & Anor.* [1951] 1 Ch. 313; 318.

FEDERAL COURT.

Vincent Lai for the appellant.

V.C. George for the respondent.

Cur. Adv. Vult.

Abdul Hamid F.J. (delivering the judgment of the Court): The appeal is against the decision of Anuar J. in the High Court at Johore Bahru dismissing a motion by the appellant asking, *inter alia*, that the Bankruptcy Notice dated July 23, 1976 and Bankruptcy Petition dated January 20, 1977 be set aside.